BRIGHAM CITY APPEAL AUTHORITY
APRIL 09, 2008 – MEETING MINUTES

PRESENT:	Jess Palmer	Member
	Marilyn Peterson	Member
	Jaye Poelman	Member
	Barbara Stokes	Alternate
ALSO PRESENT:		
	Jeff Leishman	Associate Planner
EXCUSED:	George Berkley	Chairman
	Don Peart	Vice Chair
	Holly Bell	Alternate
	Jared Johnson	Community Development Manager

AGENDA:

1. APPROVAL OF THE AGENDA
2. APPROVAL OF THE FEBRUARY 27, 2008 MEETING MINUTES
3. APPLICATION #615 / VARIANCE / 1075 WEST 600 NORTH / LLOYD MCNEELY OR JOYCE WILEY

Mr. Leishman called the meeting to order and stated that they did not have a Chairman or Vice Chairman in attendance. He entertained a motion or a vote to elect an acting Chair or Vice Chair to conduct the meeting.

> **MOTION:** A motion was made by Jaye Poelman that Marilyn Peterson act as Chair at this meeting. The motion was seconded by Barbara Stokes and passed unanimously.

Ms. Peterson welcomed everyone to the meeting.

APPROVAL OF THE AGENDA:

> **MOTION:** A motion was made by Barbara Stokes to approve the agenda as written. The motion was seconded by Jess Palmer and passed unanimously.

APPROVAL OF THE FEBRUARY 27, 2008 MEETING MINUTES:

> **MOTION:** A motion was made by Jess Palmer to approve the minutes of the February 27, 2008 meeting. The motion was seconded by Jaye Poelman and passed unanimously.

APPLICATION #615 / VARIANCE / 1075 WEST 600 NORTH / LLOYD MCNEELY OR JOYCE WILEY:

Ms. Peterson stated that the Appeal Authority is a quasi-judicial board, meaning there are five members of the quorum. They can act with three members but the applicant has the right to be heard by five as five members give the applicant a better opportunity. She made the applicants aware of this and asked them if they would like to continue. Ms. Wiley stated that they would like to continue.

Ms. Peterson stated that this particular piece of property had some history associated with it and passed out the minutes from the Board of Adjustments Special Meeting dated March 30, 2004, item number 594 appeal of Planning Commission approval of a conditional use permit, item number 2383 Wisco Incorporated. Maps were also handed out.

Ms. Wiley stated she represented herself and Lloyd McNeely. They have a house and about 23 acres of land in the area next to Wisco's long building that has doors opening onto their home which is a security risk and to them it is also a privacy risk as it invades their privacy. The neighbors have been trying to be very congenial about it. The doors are open and she said they understand why they would need to have the doors open for ventilation and air movement but it puts people in their backyard at all times of the day and sometimes on weekends. She said they priced putting in a fence and to install a privacy fence is much more expensive than normal because Wisco leveled the land, graduating it down over 3-feet above their land on the south side. The land is built up at least 3-feet on the south end, which makes a fence more expensive. Ms. Wiley quoted prices from last fall stating that a vinyl fence is just under $10,000. Her preference was cinderblock. They have a friend who is a mason and he came over and gave them a rough estimate of $25,000. They thought if they put a building in it would give them a multiple use and would be a better financial investment for them than putting in a fence.

Their proposal is to put in an open-faced shed and a large barn. The shed would be placed from about the middle of their house back and would cover the most offensive doors and they would not be required to spend much more money as it would cost to put in the type of fence they would like to have. Ms. Wiley stated that was their intent in asking for the waiver. The waiver is required because if they put in the open-faced shed to cover the doors to gain privacy, they would not be able to use the shed because there is not enough room between their home and the shed to drive in with equipment.

Ms. Peterson asked if there were two issues, one with building a shed and the other with privacy. Ms. Wiley stated that they want a waiver to the 20-foot requirement. She said she thought another issue she had not realized was the total amount of square feet they would be allowed to have. Ms. Wiley stated they want the building in that area to accomplish not having to buy a fence. She said if they are going to put in $10,000 to $25,000 to regain their privacy and security, they would like to have a building they could use rather than ask for a fence. Ms. Stokes asked if part of the Wisco permit required it to be fenced.

Mr. Leishman referred them to the site plan that went before the Planning Commission. On the left side there is future storage and a 50x200 building with a note just to the left of it stating, *"Provide fence to screen from adjacent residential area where buildings do not provide a screen."* The intent of the Planning Commission was to protect the adjacent neighbor by having either Mr. Cory Wilkes install a screening fence or to install a building, providing the screen; where the building was not in place, there was to be a screening fence. Mr. Leishman commented that the difficulty is that Wisco is located within an MD, Manufacturing District, zone, which has entirely different standards such as having their building on their property line. Just across the fence, the McNeely-Wiley property is in an A-5, Agriculture – 5 acres per lot, zone; which is restricted in a different manner such as any buildings have to be 20-feet away from the property line. *Accessory buildings with an area less than or equal to 2-times the area of the primary structure, main floor and attached garage, which are customarily incidental to the permitted use but in no case shall the accessory buildings combined area be greater than 5,500 square feet.* Accessory buildings are highly regulated on how big they can be in an A-5 District. In an MD District, Wisco could have 50-percent of the property covered with building. The standards for the adjacent districts are very different. To protect this neighbor, the intent of the Planning Commission was that there needed to be a wall, which would provide a screen, and if there would be no wall, then there would need

to be a fence; either way the neighbor would be protected.

Mr. Poelman commented that instead of storage bays, which have doors on the forward end, there are personnel doors at the back. Mr. Leishman said if the doors are shut, it is screened, however, if the doors are opened ~~than~~ then the screening is compromised. Ms. Wiley presented a picture that had been taken from the back of their house the day before this meeting. She said that just prior to the picture being taken, two of the doors were open. Ms. Peterson clarified that there is still no fence to provide screening where the buildings do not provide screening. Mr. Leishman replied that is an enforcement action against Mr. Wilkes. Ms. Wiley stated that when all of this happened they believed that was going to be a solid wall building with no doors. She said she thought that most everyone in the meeting, including Mr. Wilkes, thought the same thing when it was passed. She said they never heard about it again until the building was built with doors. Ms. Peterson told the members of the board that their minutes indicated that same thing; that there was to be a fence. As she reviewed this, she was concerned that they were looking at two different issues; one being privacy. She asked Ms. Wiley if the privacy factor was met, if they would still request a variance.

Ms. Wiley commented that it is also a matter of security as they have had their place broken into three times in the past fifteen years. She said they do not know these people and they can change on a daily, weekly or monthly basis. They all seem very nice and do not do anything to them but they cannot go away on vacation and feel good about it. She said they stop their newspaper and mail so the public does not know they are on vacation. Ms. Wiley said it is a security and privacy issue. If there was a security fence there, they would not expend the money to put up either a fence or a building. She also stated that if Mr. Wilkes did not have a problem with them putting a building there, it did not seem the variance would matter. She again stated that they would not go to the expense to do it if they had been protected from that building. Ms. Stokes clarified that Ms. Wiley was talking about a fence or solid non-opening doors so they could not look onto their property. Ms. Stokes asked if there was an issue with Mr. Wilkes not meeting the fence situation. Mr. Leishman replied that it was stated to provide a fence to screen from the adjacent residential area where the building does not provide a screen. There is no fence from the south wall of the structure going southward and Mr. Wilkes has been placed on notice that that needs to be done. Mr. Leishman stated that Mr. Wilkes is working on how he will comply with that. Ms. Stokes asked if the variance was given, if the notice would go away in regards to the fence. Mr. Leishman replied that the requirement was placed on Mr. Wilkes and has nothing to do with the adjacent property owner. It could be modified by the Planning Commission. They could ask the Planning Commission if it would be alright to relieve Mr. Wilkes of that obligation if the other property owner had satisfied the screening.

Ms. Wiley pointed out the area where most of their activity takes place and how the building would dramatically limit visibility into their place. The size and location of the building will increase their privacy and security. Mr. Leishman gave a reason and an example for screening. In the case of a commercial building with a parking lot located next to a residential building in the core of the town, the screening would be for the headlights; therefore a fence would be installed for that purpose. Mr. Leishman asked what the purpose of screening would be in this situation such as noise, offensive odors/vapors, or individuals. It would take additional research into the Planning Commission file to determine what they were trying to screen out. If they are trying to screen noises or people from looking into a yard, a closed door would do that.

Ms. Peterson commented that she believed Mr. Wilkes did things with thought and some credit should be given there. She agreed with Mr. Leishman in questioning what is being screened. She commented that no one is being stopped from coming into her yard, which is the nature of the beast. Ms. Peterson asked if the manufacturing zone was all the way around Ms. Wiley's property. Ms. Wiley pointed out the property they own and the zones they are in. She also pointed out another neighbor's property, which is also A-5 and said they expressed no concern with what they are doing. Ms. Stokes said they are almost comparing apples to oranges because Mr. Wilkes property is manufacturing. Ms. Wiley commented that she did not know if Mr. Wilkes objected or not. She said a point was that this area is planned to be industrial. In the future industrial park, anyone can put a building on the property line. She said they are not putting Mr. Wilkes in a worse position than if they sold out to industrial.

Mr. Leishman used the zoning map to illustrate where the MD district is located and also the A-5 district. He pointed out on the map the area that is proposed for future industrial and as it is planned to be that way, there could be industrial buildings all around their property line. He said the difficulty is there are different interests because of different zoning districts.

Ms. Peterson commented that as a board of appeal, one of their considerations is that any decision they make has to follow the land for a variance and also they have to weigh the decision for future use. Many times people have come here and had to be denied because in the future there still would be an issue that is not conforming. She said it is a critical fact that future use is probably not going to be A-5. Ms. Wiley stated that the building they are proposing to put up is certainly less costly to tear down than their home. She said there may be businesses that may come in and use their home as an office but typically they come in and take down everything that is there. Mr. Leishman commented that if the Wiley-McNeely property were rezoned to MD the value of the property would be many times the value it is currently.

Mr. Leishman commented that they need to be very cautious and any motions need to be based on criteria. For this property in an A-5 zone it should have a 20-foot sideyard. He referred everyone to a table explaining the sideyard requirements. The minimum sideyard for any dwelling or main building shall be 20-feet and the standard minimum sideyard for accessory buildings in an A-5 has to be 20-feet; which is also the requirement in many other districts. In developing the findings of fact, the five criteria needs to be looked at, which is regulating the A-5 zone.

Mr. Palmer commented that, from his memory, when Wisco came and wanted to build, it was supposed to be solid across the back and then the doors came; there was supposed to be screening. He said it seemed like it would remedy most of their situation if there was a solid wall put the entire length where those doors can be opened. Mr. Leishman reiterated the question of what is being screened. Ms. Stokes commented that once the doors are opened, it breaches the screen. She said there are a lot of issues here. Ms. Peterson agreed. Mr. Leishman asked if those issues were for this board and made the comment that he was not sure they were.

Mr. Leishman commented that if the Planning Commission was comfortable with the situation of having doors that can open in that wall, why would it be an issue for the Appeal Authority if the Planning Commission was a regulating body. The issue is that the Planning Commission allowed something that the next door neighbor does not like and they want to protect themselves and do some things that will bring that up to a higher level than the Planning Commission saw fit to impose. Ms. Wiley said they were never involved in any meetings that said it would not be a solid wall. Mr. Leishman said this has gone through several evolutions and is entirely different than the way it was originally presented to the Planning Commission. Due to Mr. Wilkes concerns, needs and business plan it has evolved from one thing to another. All were in agreement, upfront, that this would be a solid wall but this, as the rest of the property, has evolved. The end result is that there were openings that were put in that west wall. Mr. Leishman stated that it was unfortunate that these applicants were not involved in the several meetings. He said they are now trying to provide that level of safety, protection and screening that they want to see, which apparently supersedes what the Planning Commission opposed.

Ms. Peterson commented that if they isolate that to the level of protection, then it does not belong at this board because their variance runs with the land. She said if they are isolating the issue to a privacy issue, then it needs to be taken somewhere else as privacy is not a land use issue. Mr. Leishman said the point they are at is that they have a man and woman who do not like the situation. They want to put a building within 3-feet of the property line. Mr. Leishman asked the board if there were conditions, based on State Code, which would allow them to take the situation and allow a 17-foot reduction. Ms. Wiley said there is quite a large building on their property line that was put next to their property line within the last 10-years. She said it was the same type of structure that they want to put up. Mr. Leishman said the State of Utah has said that agricultural buildings are exempt from building codes; true agricultural buildings, as defined by the State of Utah, are exempt from standards, inspections and building permits. The only thing that can be regulated is the zoning, which is independent of building codes. Mr. Leishman recalled that the individual came in and they discussed how close they could be to the property line. Because a building permit inspection was not done or required, there was no follow through. The same

situation could exist in this case. If they built a true agricultural building, zoning would require a 20-foot setback but there would be no inspections or follow-up. Zoning also regulates how big it can be but without the provisions of a building permit the City is not going to know what actually happens. Mr. Leishman read, *the primary structure (the home) has an area of 2,132 square feet as defined in the Court House records. The combined accessory building in this zoning district can be 2-times the area of the primary structure or 4,264 square feet but not to exceed 5,500 square feet as noted.* According to the Court House they have a 2,000 square foot accessory building and therefore to build any additional they could not exceed an additional 2,264 square feet.

The Planning Commission for residential areas states that the area can be 2-times the area of the home up to 2,000 square feet; in this zone it is 5,500 square feet. There is a provision that states *accessory buildings, individual or combined, that exceed the provisions of paragraph 1 or 2 above but due to lot size being significantly greater than the minimum required for the respective district are considered by the Planning Commission to be acceptable under a conditional use permit.* Mr. Leishman explained that even though there are limits, if a zone change were to be made and the lot was larger than the required five acres than perhaps they could have more than 5,500 square feet or 2-times the area of the home through a conditional use because the lot is substantially larger than what is expected. He said if this is approved, it may be wise to look at it and have the same provision in the A-5 zone as it is in all of the residential zones.

Ms. Wiley stated the building would be for multiple uses as they are going to park farm equipment in it, store hay in it and it is large enough she could use it for a riding arena in the winter. She clarified it would be for agricultural farm use. Ms. Peterson asked if it would fall under the use that Mr. Leishman had read earlier. Mr. Leishman clarified that true agricultural buildings are exempt from building codes but not from zoning. He said another frustration is that even though Mr. Wilkes can have a building right at property line but will have to have a firewall to protect the adjacent neighbor; however, the neighbor, Ms. Wiley, in an agriculture zone, could build a structure close to property line and, as there are no building permit requirements, does not have to have a firewall to protect Mr. Wilkes because of the State exempting agricultural buildings out of the standards for building permits. Ms. Wiley asked if there was a firewall that protected them from the Wilkes property and where it was. Mr. Leishman said if they are right at property line they have to have a firewall and through the next 20-feet, the requirements lessen. He said he thought Mr. Wilkes was at 10-feet and at that distance the requirements are a lot different than what is required at property line. He explained the purpose of a firewall is to try to make it difficult for a fire to burn a certain way as it is supposed to protect the neighbor. As you get further away and have more ability to fight a fire from that side, there can be openings and fewer requirements. On the other hand, there could be a situation that could compromise the safety of Mr. Wilkes building simply because the State has exempted agricultural buildings out of all requirements for a building. Mr. Leishman stated that the Building Code, in its pure form, would require a building permit for an agriculture building but the State of Utah has superseded and overridden the National Building Code and exempted agricultural buildings.

Cory Wilkes came forward. He thanked the members for doing what they do and thanked Mr. Leishman and stated that Brigham City is blessed to have Mr. Leishman; his wealth of knowledge is remarkable as well as his professionalism. Mr. Wilkes stated that if he had the money he would put in the fence and have the screening, at least for visibility because he understands her concern. He said the reason the building is there and has doors on the back is that it evolved and it is not completely accurate that Ms. Wiley and Mr. McNeely were not involved in it. Mr. Wilkes said, as was pointed out, that his building could be right on the property line. It is 10-feet off the property line because he had to go to the Planning Commission over and over and Ms. Wiley and Mr. McNeely had problems with his building. He said the building that is there is not the first building that he was going to build. He was going to build a much bigger building in the middle and wanted to have piles of sand and things like that which bothered his neighbors, the applicants, which he understood. Mr. Wilkes said he personally went to Mr. McNeely and suggested doing this building first which would provide the screening for the other buildings and activities which Mr. McNeely thought was great. Everyone thought that plan was great so they changed the plan to build that building first. He said he did not know he was going to need doors back there at first. When he started building it, the fire codes and all those things came in. Mr. Wilkes said he was going to put it right on the property line but there became problems with that. He went to the Planning Commission many

times and it evolved to where he would voluntarily move it off the line and he was not happy about it but he said that in hindsight, there was a lot of wisdom in that; the 10-feet has been a blessing to him many times. He said he would read a letter, later, that would show some of the reasons why it had been a blessing. Mr. Wilkes commented that if the zoning to the west was changed to the same zoning he has, as he understood it, they could not automatically build on the property line but would have to go through the same process he did and they would have to put in a firewall to build on the property line.

Mr. Leishman replied that residences are not allowed in an MD district; there can be a residential onsite manager/caretaker or workers dwelling for operational or security purposes accessory to a modified permitted or conditional use. He said that if the McNeely-Wiley property was rezoned to MD it would become legal nonconforming because it does not conform to the standards, which would create other situations. In an MD district, there would be accessory buildings customarily incidental to the permitted use of which a house is not a permitted use. And in the case of accessory buildings customarily incidental to the conditional use, a house is not permitted so it would not be a conditional use and then they would need to go into the other provisions and basically anytime they would turn around they would need to go to the Appeal Authority because they would be regulated as nonconforming. Nonconforming structures cannot do anything until they go to the Appeal Authority.

Mr. Leishman stated that Mr. Wilkes, under an MD, is very easy to regulate because the main use is defined in the Code. If the McNeely-Wiley property were to be rezoned, it would be very difficult to regulate them as legal nonconforming. If they were to build a hay barn and it was recategorized as something such as a storage facility, there would be significant firewall requirements. Mr. Wilkes stated that was exactly his point. He said that in regards to the screen he explained how that evolved. Originally, where the building is currently located it was going to be storage sheds but he could not put storage there and still do what he wanted with the building he wants to have. If he put a building there that he could rent out then it would serve both of their purposes. The screening was not required. Once everyone was on the same page and decided that the building would be there, screening was no longer an issue because originally it had no doors and it would be a great screen. He said no one saw that coming and now he cannot afford it and they do not want to spend the money.

Mr. Wilkes commented that the doors do get opened and he has an issue with that because screening is not required by him. He said if it was required he would be forced to do it. Mr. Wilkes stated that farther south, it was never required; in the plan or in any minutes he knows of he was never required to have screening down there. He pointed those things out on the map. He said it was not specifically said that he had to have a fence there, it got overlooked. He said as much as they try to get the minutes perfect, things like that get overlooked. As well as the Planning Commission works, things get overlooked as this one thing did. Mr. Wilkes stated that if he had the money he would build a fence but he does not and they do not want to spend it at this time so a solution that works needs to be found. He stated that he wanted to take issue that he does not have to provide screening there because it got overlooked. In regards to his opposition, he voluntarily moved 10-feet off the line because the applicants wanted him to do so. To have them move 3-feet from the line is not fair to him because it causes him other problems.

Mr. Wilkes read a letter he wrote to the Appeal Authority:

To all concerned,

I want to strongly object to the requested variance for the following reasons:

Fire hazard. I simply do not want a hazard, especially a fire hazard, no matter how small, or of any degree, to be allowed any closer to my property than that allowed by law, or ordinance without a variance. The fire hazard could increase my insurance rates, as well as my exposure to risk of life and property, and could possibly affect the permitted use of my tenants, and/or affect the fire control measures imposed on me now, or in the future, as far as fire laws, access or other issues determined by ordinance, or fire codes.

I would be concerned that it would limit access in an emergency situation such as people leaving through

the back doors of my building, (their shops). Access, which I believe is required by ordinance, and fire code. Also, if a building is built that close to mine, it may make it feel contained between the buildings, and may scare those who are already nervous, and trying to quickly exit through the back doors, that are required for that purpose.

I would also be very concerned that Mr. McNeely, or Ms. Joyce Wiley, or even a future owner of the property would have a difficult time with access that may be needed for maintenance of the building. My relationship with the current owners is not amiable and we would not allow each other the simple courtesy of access. I do not know if a future owner would experience the same difficulties, but the closer they are to my building, could mean a difference in our someday, possible, future relationship.

I would like to STRONGLY object, solely because my building was within ordinance to build on the property line, but is off set approximately 10-feet at the request of the applicants. They had many objections to my building within ordinances, without variances. Their concerns were much the same as mine, and included the fact that water, and/or snow may come off my building and onto their property, and as they know, that is unacceptable.

Finally, I want to assure you, that if a variance is granted, there will be a lawsuit filed based on, but not limited to these reasons.

With respect to the process,

Cory Wilkes – Owner Wisco Inc.

Mr. Wilkes stated that if they could move the variance to 10-feet, he would not complain about that. Inside his building he has seven shops, to do certain uses there must be a firewall between them. To build a 3-hour firewall big enough for those shops would be about $9,000. There is not a firewall on the west wall of his building; one was not required because he moved 10-feet from the line. To build a firewall the whole distance of his building on the west side would be extremely expensive. If they wanted to build a building right on the line then that would be expensive because they would be required unless they built agricultural building. Mr. ~~Wiles~~ Wilkes said the wisdom of Mr. McNeely and Ms. Wiley played a big part in this. He said he was not happy to move his building 10-feet from the line but it was done. There have been quite a few things that have caused him to have to do maintenance on that and they would not want him on their property doing that maintenance. It has been good to have it that way and it would serve them well also. He would not oppose 10-feet if it would not hurt his fire code requirements or make it so he cannot have certain tenants nor would he oppose how big their building is.

Ms. Wiley said she had some comments about Mr. Wilkes concerns. She said in regards to exiting the building, he has 10-feet and anyone could easily walk along his property. She said she believed there was a fencing requirement for industrial property to have it fenced from the public for any use other than a parking lot and there are storage and personnel doors. Mr. Wilkes stated that having room between the property line and their east wall would serve them as well as it has served him. He restated that he is willing to see them go to 10-feet with the variance but he said 3-feet would not be fair.

Mr. Leishman presented 29.14.050 Special Provisions. He said it was in a different location when Mr. Wilkes came before the Planning Commission. It states, *any area outside of a building used for any activity other than off-street parking and loading shall be completely enclosed within a solid fence or wall of a height sufficient to completely screen such activity from the street or from adjoining parcels. All uses shall be free from objectionable noise, hazards or nuisance.* Mr. Palmer commented that there should be a fence all the way around Wiscos except where he comes into the parking lot. Mr. Leishman said that sentence was presented to the Planning Commission. He said the previous City Planner, Mark Teuscher, said there needed to be a fence on the west and on the south and Mr. Wilkes was going to go to the Planning Commission to discuss that. Mr. Wilkes said that had been discussed but was not part of his requirement. Mr. Wilkes said it is not being used for the uses that were just described. The building was agreed upon without their knowledge that there were going to be doors there; even he did not know that.

Mr. Wilkes said he went to Mr. McNeely and Mr. McNeely said it would be fine for screening, he put the building in, he was made to put the doors in, the people in the shops open the doors for ventilation and they also go behind there to do maintenance to the building. They are not doing commercial activities back there that require fencing. Mr. Leishman said they would have to go back to the minutes of that meeting. He said Mr. Wilkes is having block storage on the southwest corner and all the way along the south property line. Mr. Leishman said at first there was going to be nothing there and it evolved into some other things. He said he thought because of the block storage that section of code would kick in and there would have to be a screening fence there.

Ms. Peterson asked if they could get back to the variance issue. She said privacy is not their issue; the variance issue runs with the land. She asked to have the distances explained to her and she asked if there was any other place they could put a building that would be usable for the purpose they need and would conform. Ms. Wiley said they could put that building most any where else on their property and have it conform except to the size allowed. The total proposed outbuildings are 4,500 feet. They have a 2,000 foot building which gives a total of 6,500 feet and they are only allowed 5,500 feet so because of the size of the building, which would not comply with the regulations because of the size. Mr. Leishman clarified that outbuildings are allowed to be two times the area of the home. They can have two times the area of the home and cannot exceed that. They are limited to 4,264 square feet irrelevant of the 5,500. Ms. Peterson said that was not their concern, their concern is the setback. She asked if that building could be placed anywhere on the property for them to be able to use it and still maintain the setbacks. Ms. Wiley answered yes. Ms. Peterson commented in knowing that, it has reduced the issue here to one of privacy which is an issue this board does not deal with. Mr. Wilkes commented that she needs to put the building there for the privacy and if it is moved 20-feet then they will not have access to get into it. He said he had no problem with moving closer to his building. Any distance from that property line that will not cause him to have to build firewalls for the uses of his shops, he will not argue with.

Mr. Wilkes asked if an adjacent landowner, such as himself, did not object to them building at the 10-foot line would it make it safe to give that variance. He said he wanted them to understand the reason she wants to get close to his building is so she can use her building. If she moves it 20-feet from the line then she cannot get in with her tractors so they need to get away from their house a bit. He said his tenants could keep the doors shut but it gets hot in there and they open the doors; they are not trying to bother the applicants but it does bother them. He said Ms. Wiley's building needs to come closer to his line but three feet is too close and twenty does not let them use the building for what they want to use it for. Ms. Peterson asked if they move it she would not have access to the proposed building. Ms. Wiley said she would not be able to drive in. Ms. Peterson commented that they have to identify five specific criteria that can be supported in a court of law. It does not matter if Mr. Wilkes is happy with them having 10-feet. There needs to be finding of facts that are appropriate and can be justified in a court of law or it cannot be granted.

Mr. Wilkes said he understood that and if they looked through those five criteria and missed on then it would waste a lot of their money and his money going to court. Ms. Peterson asked if there was any more discussion on this. Mr. Leishman suggested, if they were ready to make a motion, to start with the criteria, work their way through and see what turns out. Ms. Peterson asked Ms. Wiley if she wanted to go over the five criteria as the applicant is usually offered the opportunity to go over how they would address the five criteria.

Ms. Wiley addressed the five criteria:

1. Literal enforcement of the Ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinances.

i. Literal enforcement would prevent the placement of a building in the requested location given that physical entry into the building with farm equipment would not be feasible due to the location of our home and yard. Our building would provide the duel purpose of storage space for farm equipment, hay and straw, and would also provide a security and privacy barrier from the adjacent property which has a 360-foot building with seven back doors to rental shops. A conditional use permit was given by Brigham City for the industrial building with a solid back wall to protect our existing home and property. The doors

were an added requirement at a later date without our knowledge. A 3 to 5-foot sideyard for our building would allow use of an open face shed and equipment shed for the intended activities normally and necessarily related to agriculture i.e. grazing, livestock grazing, and partially protect it from the intrusion of negative effects existing from the adjacent industrial property which has not been fenced.

2. The special circumstances attached to the property that do not generally apply to other properties in the same zone.

ii. The building just discussed, the doors open directly into our home, yard and pasture. The doors are open during working periods, assumedly for ventilation, cooling and whatever. The occupants take breaks outside the doors on a regular basis Monday through Friday and frequently on weekends and holidays. If we put the building in the location we would like, we would regain our privacy and security of our home. We are not aware of any other properties in the A-5 zone in Brigham City that are subject to unfenced industrial shop doors approximately 60-feet from a residence.

3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the zone.

iii. Adjacent properties zoned A-5, a different piece of property, not the Wilkes property, has a 36x70x18-foot open face shed building that is set 3 to 5-feet off our east property that is zoned A-5. This building is approximately 5 to 10-years-old and was erected without any notification of a variance request to them. The builder advised them that they had the proper permits from Brigham City. As Mr. Leishman explained earlier there are no permits and no follow up. If Mr. Wilkes had not complained they could put the building in there but it is obvious now that they cannot put it in and ask for forgiveness because Mr. Wilkes would complain. There is a similar building on another one of their property lines.

4. The variance will not substantially affect the General Plan and will not be contrary to public interest.

iv. Brigham City's planned industrial use of the area in the future or the current A-5 zoning given that our planned building consists of a wood frame with no permanent cement foundation and is intended for agricultural use. For future industrial use of our property, this building would just be a fly speck on the wall. The variance would not be contrary to public interest and it is consistent with the sideyard requirements for industrial use if A-5 property is rezoned in accordance with Brigham City plan in the future. The industrial property has been built up gradually to approximately 3-feet in height against cement barrier blocks on the property line. The field fence beside the barrier blocks belong to us. Our opinion is that there would be no effect to the neighboring property. Mr. Wilkes does have some serious concerns regarding a fire hazard.

5. The spirit of the land use ordinance is observed and substantial justice done.

v. The variance would be consistent with the land use ordinance for a multiple use of industry, agriculture and open spaces and justice would be done by promoting convenience, order, prosperity and general welfare of the inhabitants. Other than being a potential fire hazard, which may potentially affect Mr. Wilkes, we do not see that it would not comply with multiple use because if it is rezoned to industrial we could build closer than 3 to 5-feet. We have no desire to move or to rezone. If we were to leave we would want to sell all 23 acres and walk out with some money. We like our home and it was there prior to Mr. Wilkes moving in. It goes back to what many places are suffering from, which is growth. There is an existing situation that inhabitants are happy with and something comes along and is rezoned which changes the whole situation. If we had any idea it was going to go industrial, the house would not be where it is and we would not have this issue. It is different when an industry moves next to your home and there has not been a normal fencing requirement. There are sound barriers put up along the freeway to protect the homes from the noise of the cars. The businesses along the side road down by Smith & Edwards have different types of cosmetically pleasant rock and cement walls for their buildings against the little road. We are sitting facing an industry, a commercial use, not the typical neighbor. If we put a 6-foot fence up, that fence would not sufficiently hide the Wilkes property; that is what makes the cost of the fence so high that we might as well put in a building.

Ms. Peterson commented in regards to Ms. Wiley's statement of, *we are not aware of any other properties in the A-5 zone in Brigham City that are subject to unfenced industrial shop doors approximately 60-feet from a residence*, she said they got close to this area. She asked, in looking at this

one thing, what the requirements are for an industry siding a resident for those kinds of uses. Mr. Leishman replied that if it is not limited to residential and go back to 29.14.050 Special Provisions it states: *Any area outside of a building used for any activity other than off-street parking and loading shall be completely enclosed within a solid fence or wall of a height sufficient to completely screen such activity from the street or from adjoining parcels. All uses shall be free from objectionable noise, hazards, or nuisances. All uses shall be conducted from enclosed buildings except automobile service stations, automatic car wash, automobile and recreational coach or vehicle sales, lease, rental or repair, off-street parking and loading, plant material nurseries, outdoor restaurants, and commercial recreation, unless otherwise permitted by planned unit development or conditional use permit.* What is trying to be done with the Special Provisions is to protect the neighbor from offenses. If there were two similar uses next to each other there would probably not be any fencing situations, noise, hazards or nuisances because they are doing similar things. That is a value judgment that is hard to define. It is difficult to answer what is going to be done to protect the neighbor from those objectionable uses, hazards or noise that will make life miserable for them because it depends on what the use is that is creating the objections and depends on what the use is that is receiving the objections. The general catchall will be to screen outside activities to protect the neighbor and the rest is up to discretion. Those provisions are with the Planning Commission in a MD and MG district and are totally discretionary.

Ms. Peterson asked if the Planning Commission would be the place for them to go to get relief. Mr. Leishman replied that the Planning Commission had evaluated it and determined these are what were necessary to protect the neighbor. He said he viewed it as Ms. Wiley wanting more than what the Planning Commission gave her. Ms. Wiley asked if the Planning Commission allowed the doors or if they came later to meet fire codes; which is what the previous City Planner, Mark Teuscher, told her. The Planning Commission addressed a storage building and screening only where the building did not protect them. Mr. Leishman restated that this evolved. In the Planning Commission file there are several versions and drawings. One of the drawings does show doors but the first drawing did not because it evolved and we were told the doors were required by the building inspector for fire code issues. Mr. Leishman said he did not know how that came about but the last drawing showed doors, which is what was acted upon.

Ms. Peterson asked the members of the board to prepare in their minds what is necessary to make a motion and to make a judgment on this. Ms. Stokes asked Mr. Leishman if he would help them with the criteria to make the motion. Mr. Leishman replied that he is to remain as independent as he can and was told by the City Attorney is that if he feels it is not defensible, he is to kick it back to the board to do more exploring and findings of fact so he cannot lead them. Anything can be appealed and Mr. Leishman stated that whatever is done needs to be defensible in a court of law.

Mr. Wilkes commented that what stands out most to him is number 5, not allowing it would cause a burden. Denying it would not cause a hardship because at the 20-foot line that building could be used but would not be able to be used as effectively and as nicely as they would like to. There are a least three of the criteria that he has objections to that he thinks would stand up. He said he would not object to anything that does not affect him that way. He said would be leaving the meeting and as soon as he can possibly afford it he will figure out how to get screening there, whether it is required or not. It is just a matter of money and time. Mr. Wilkes said all he could tell them for sure is that he will not stand for having it 3-feet from his property line and he will put screening there as soon as he possibly can.

Mr. Poelman asked about the overhead doors on the sketch and if they were meant to be driven through and asked if they could get by with one door or an L-shaped drive through. Ms. Wiley replied that the other building they have on the property which has an L-shaped drive through and the door that faces the north gets frozen over when the snow slides off; even if it is shoveled every day. It is nearly unusable in the winter. The door with the eaves, where the eaves drop the snow off the sides, is the reason they want them there. It would also be good for air to move through.

> **MOTION:** A motion was made by Jess Palmer to deny the variance based on the following findings of fact:
> 1. The literal enforcement of the zoning ordinance would cause an

unreasonable hardship on the applicant that is not necessary to carry out the general purpose of the land use ordinance.

i. He did not feel it met that in that there is enough acreage to place the building in another location to where the building can be used and they can have the enjoyment and use of the intended structure and that there is sufficient acreage that the building can be placed somewhere else on their roughly 25-acres.

2. The special circumstances attached to the property do not generally apply to other properties in the same district.

ii. He felt the other properties in this same area are also required to have the 20-foot setbacks to be properly built.

3. Granting the variance is essential to the enjoyment.

iii. He understood they would enjoy having it placed in this particular place but for the enjoyment of actually having the building to house their agricultural equipment, ect., they can receive the enjoyment of the building in a different location. The only one that is denying them is the visibility of their neighbor to block that and that is not something we can grant.

4. The variance will not substantially affect the plan.

iv. He felt they need to stay with the rules of the plan, the zoning, as it is.

5. The spirit of the zoning ordinance is observed and substantial justice done.

v. He felt by holding up the ordinance that they have, they are being just and fair to the people involved.

The motion was seconded by Barbara Stokes.

Discussion: Ms. Peterson had several notations to add.

1. That if a variance is denied, it may be denied with just one. All five criteria do not have to be addressed. The burden of proof is for all five and they have to meet all five; if the board finds one that would be enough for denial. Mr. Leishman said that was correct but it helps to build the case if the other four are looked at.

2. Where it was said the zoning was A-5 and there is a 20-foot setback; that was one of the issues talked about. It is a mixed zoning issue but the consideration is every zoning part in A-5 is contingent upon the zoning parts of A-5 and the MD can vary on compliance. We have everyone conforming to their specific zoning. Those are the two things Ms. Peterson wanted added for the record. Jess Palmer accepted that addition and Barbara Stokes also accepted the addition.

The motion passed unanimously.

Ms. Peterson explained to Ms. Wiley that she had 30-days to appeal this decision to the District Court. Ms. Wiley asked where she would go to proceed with the privacy issue. It was talked about going back to the Planning Commission to look at the fence issue as a conditional use permit. The Planning Commission could be asked for a reconsideration based on the current situation.

Motion: A motion was made by Jaye Poelman to adjourn. The motion was seconded by Jess Palmer and passed unanimously.

The meeting adjourned at 7:24 p.m.

This certifies that the minutes of April 09, 2008 are a true and correct copy as approved by the Appeal Authority on December 09, 2008.

Signed: _____

Jeffery R Leishman - Secretary